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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,616	08/10/2001	Eric W. Triplett	960296.97273	5346

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EXAMINER

HELMER, GEORGIA L

ART UNIT PAPER NUMBER

1638

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/927,616	<b>Applicant(s)</b> TRIPLETT ET AL.	
	<b>Examiner</b> Georgia Helmer	<b>Art Unit</b> 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,7,9,10,12,13,15,16,18,19,21,22 and 24-32 is/are pending in the application.
- 4a) Of the above claim(s) 28-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,7,9,10,12,13,15,16,18,19,21,22 and 24-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/10/01</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of the Claims***

1. The Office acknowledges receipt of Applicants Response; dated 23 November 2005.
2. Applicant has cancelled claims 8 and 11, and amended claims 1 and 10. Claims 1-4, 6-7, 9-10, 12-13, 15-16, 18-19, 21, 22, 24-27 and 28-32 are pending. Claims 28-32 have been withdrawn as being drawn to a nonelected invention. Claims 1-4, 6-7, 9-10, 12-13, 15-16, 18-19, 21, 22, and 24-27 are examined in the instant action.
3. This action is made FINAL necessitated by Applicant's amendment.
4. All rejections not addressed below have been withdrawn.
5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112, first paragraph-Enablement***

6. Claims 1-4, 6-7, 9-10, 12-13, 15-16, 18-19, 21, 22, and 24-27 are rejected under 35 U.S.C. 112, first paragraph. This rejection is made for the reasons of record as set forth on pages 6-9 in the Office Action mailed 18 February 2004, and on pages 4-5 in the Office Action mailed 21 July 2005. Applicant's arguments filed 23 November 2005 have been fully considered, but are not deemed persuasive.

Applicant has amended claims 1 and 10 incorporating among the limitations:  
"wherein the alpha-proteobacteria enters the stem of the plant through a wound site on

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the plant", and "observing control of crown gall disease on the plant compared to a plant not exposed to the trifolitoxin-producing bacterium, wherein the plant is a grape plant, a fruit tree or a rose plant". Claims 9 and 18 are drawn to the method...wherein the plant is a seed. Since the parent claim recites "wherein the alpha-proteobacteria enters *the stem of the plant* through a wound site on the plant", it is difficult to understand how the bacteria enter the stem of the plant, wherein the plant is a seed. Applicant has shown no teaching of how this embodiment would function, what the steps would be, and the results thereof. Therefore claims 9 and 18 are rejected as being non-enabled.

Applicant traverses primarily that (Response, p. 7) with respect to the term "alpha proteobacteria", Applicants maintain that the "scope is not broad because it has been limited to Rhizobiaceae bacteria (1) which have been genetically engineered to express the trifolitoxin operon, (2) produce trifolitoxin, and (c) control crown gall disease.

Applicant's traversal is unpersuasive. Applicant has presented biocontrol only on plant hosts Nicotiana and Grape for Agrobacterium strains specific to these plants, and only on grape for Rhizobium. No evidence is given on host plants other than Nicotiana and Grape, and for other strains of Agrobacterium no adapted to particular plant host species. Furthermore, claims 1 and 6-9 are not even limited to particular bacteria genera and none of the claims are limited to plant hosts combined with their infective strains.

### **Remarks**

7. No claims are allowed. Claims 1-4, 12-13, 19, 21, 22 and 24-25 are deemed free of the prior art, given the failure of the prior art to teach or reasonably suggest

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Agrobacterium or Agrobacterium vitis F2/5 as bacterial host for trifolitoxin production, or the plant hosts of claims 1 and 10.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

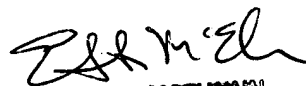
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Georgia Helmer whose telephone number is 571-272-0796. The examiner can normally be reached on 10-6 Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Georgia L. Helmer PhD  
Patent Examiner  
Art Unit 1638  
March 19, 2006

  
**ELIZABETH MCELWAIN**  
**PRIMARY EXAMINER**